



PUBLIC NOTICE

Federal Communications Commission
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DA 04-3607

Released: November 17, 2004

DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF ICG TELECOM GROUP, INC., BY MPOWER COMMUNICATIONS CORPORATION

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-406

Comments Due: December 2, 2004

Reply Comments Due: December 9, 2004

On October 26, 2004, ICG Telecom Group, Inc. ("ICG") and Mpower Communications Corp. ("Mpower") (together, the "Applicants"), filed an application pursuant to sections 63.03 and 63.04 of the Commission's rules¹ requesting approval of an assignment of substantially all of ICG's California assets, including customers, to Mpower.² The Applicants also request expedited consideration in order to maintain the value of the existing California customer base and allow the proposed transaction to be consummated as soon as possible.

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules³ because, immediately following the proposed transactions, (1) Applicants and their affiliates combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) to the extent that Applicants or their affiliates provide U.S. local exchange services or exchange access services, those services are provided only in geographic areas served by a dominant local exchange carrier that is not a party to the proposed transaction; and (3) neither of the Applicants or their affiliates is dominant with respect to any service.

¹ 47 C.F.R. §§ 63.03, 63.04; see 47 U.S.C. § 214.

² Applicants are also filing an application for consent to transfer authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

³ 47 CFR § 63.03(b)(2)(i).

ICG, a Colorado corporation, holds domestic and international Section 214 authority, and offers resold and facilities-based services with numerous points of presence nationwide, including coverage over 4,000 rate centers. ICG provides competitive local and/or long distance services in every state except Alaska and Iowa. ICG's core markets are located in Alabama, California, Colorado, Georgia, Kentucky, North Carolina, Ohio, Tennessee, and, through a subsidiary, Texas. ICG's services are primarily offered to businesses, Internet service providers ("ISPs"), interexchange carriers, and other telecommunications carriers. All of the services provided by ICG are competitive in nature, and neither ICG nor any of its affiliates holds a dominant position in any market.

Mpower, a Nevada corporation, is a facilities-based communications provider that holds domestic and international Section 214 authority and delivers a full range of telephone, high-speed data, Internet access, and Web hosting solutions. Mpower offers an integrated bundle of broadband data and voice services to business customers in areas throughout California, Nevada, and Illinois. Mpower has no affiliated companies that provide telecommunications services, and all of the services Mpower provides are competitive in nature. Mpower does not hold a dominant position in any market. Mpower is a wholly-owned subsidiary of Mpower Holding Corporation, a publicly-traded Delaware corporation. The following entities own or control ten percent or more of the equity of Mpower Holding Corporation: Western Highland Capital, Inc. (11%) and MCCC ICG Holdings, LLC (13.96%). Neither MCCC ICG Holdings nor Western Highland Capital have any owners whose ownership interest would constitute an effective 10% or greater indirect interest in Mpower.

On October 21, 2004, ICG and Mpower, through its corporate affiliates, agreed to a transaction wherein substantially all of ICG's assets in California, including facilities, real estate, and customers, will be transferred to Mpower. As partial consideration for the proposed transaction, ICG's existing parent company, MCCC ICG Holdings, LLC, will receive a minority ownership interest in Mpower's holding company. Under the terms of an Asset Purchase Agreement, Mpower will begin providing service to ICG's existing customers once appropriate regulatory authority to transfer the customers has been received. Customers of ICG in California will be migrated to Mpower as soon as practicable. It is not anticipated that the migration to Mpower will result in any change in rates or terms of service to ICG's existing California customers.

The Applicants assert that the proposed transaction is in the public interest because it will not adversely affect Applicants' managerial or technical qualifications, and will enhance the financial qualifications of Applicants, while providing ICG's California customers with a greater variety of service options and assure them no disruption of service. Applicants also assert that the proposed transaction will be virtually transparent to existing customers of ICG, and will give leave ICG better positioned to continue to compete against the larger, better-capitalized incumbent providers in its remaining markets. The proposed Transaction is, therefore, expected to invigorate competition and to help to ensure that customers continue to have a competitively active and financially viable alternative in the business communications marketplace.

GENERAL INFORMATION

The transfer of control of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before December 2, 2004**, and **reply comments on or before December 9, 2004**.⁴ Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31st day after the date of this notice.⁵ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

⁴ See 47 C.F.R. § 63.03(a).

⁵ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: www.bcpweb.com; phone: 202-488-5300 fax: 202-488-5563;
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 3-C403, Washington, D.C. 20554; e-mail: alexis.johns@fcc.gov;
- (4) Terri Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: terri.natoli@fcc.gov;
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (6) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone: 202-488-5300, fax: 202-488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson at (202) 418-1394, or Alex Johns at (202) 418-1167.

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